

IN RE: PETITION FOR SPECIAL HEARING * BEFORE THE
SE/S Eastern Blvd., 50' (+/-) * ZONING COMMISSIONER
NE of c/l Goeller Avenue * OF BALTIMORE COUNTY
203 Eastern Boulevard
15th Election District
5th Councilmanic District
Legal Owners: G. Bathurst, et ux * Case No. 93-260-SPH
Contract Purchasers:
Elton B. Ensor, et ux
Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This case comes before the Zoning Commissioner as a Petition for Special Hearing for the subject property located at 203 Eastern Boulevard in the Essex section of Baltimore County. The Petition is filed by the property owners, Gerald Bathurst and Rosemary Bathurst, as well as their lessee, Elton E. Ensor. Relief is sought pursuant to Section 500.7 of the Baltimore County Zoning Regulations (B.C.Z.R.). Specifically, the Petitioners request the issuance of a use permit for the accessory use of a portion of the property as a residential art salon, specializing in demographic art work. The requested relief and property is more particularly shown on Petitioners' Exhibit No. 1, the plat to accompany the Petition for Special Hearing.

Appearing at the public hearing held for this case was the property lessee/business proprietor, Elton E. Ensor. Also appearing in support of the Petition was Kurt L. and Dawn E. Connary, and Nancy Ensor. The Petitioners were represented by F. Vernon Booser, Esquire. There were no Protestants present.

Mr. Ensor testified and presented the site plan. That plan shows that the subject property is located on Eastern Avenue near that road's

intersection with Goeller Avenue. The property is improved with an existing structure which contains the subject art salon, which is 300 sq. ft. in area, as well as a two-story framed apartment building. Also, the property is improved with a pool and wood deck to the rear of the structure. The property is also depicted in a number of photographs which were submitted as exhibits at the hearing.

The site is 6,250 sq. ft. in gross area and is zoned B.L.-C.S.I. Immediately adjacent to the property is a two story framed retail building to the east and a two story office building which houses the Nationwide Insurance Company to the west. The Nationwide Insurance Company's property also contains a macadam parking lot, two spaces of which are utilized by the Petitioner for the subject art salon operation.

Mr. Ensor also testified that his business has been at this location for a number of years. He believes that his business does not, in any manner, adversely affect the surrounding locale. In support of this contention, he produced pages of a petition signed by many of his clients and neighbors in support of the requested relief. He also testified that he has original works of art at the location. Lastly, he observed that the proposed hours of operation are from 12:00 noon to 9:00 P.M. Monday thru Thursday, and from 12:00 noon to 11:00 P.M. on Friday and Saturday. The salon is closed on Sundays.

Although no Protestants appeared at the public hearing, Zoning Plans Advisory Committee comments were received from the Office of Planning and Zoning. The initial comment recommended denial of the Petition and cited Section 402 of the B.C.Z.R. However, a review of that section of the regulations discloses that same is applicable only to residential art salons located in R.C.2, R.C.5, D.R.1, D.R. 2, and, in certain circumstances,

es, D.R.16 zones. Thus, in that the zoning of this property is B.L., it is clear that Section 402.C.1 is not applicable to this case.

This erroneous conclusion was corrected by a subsequent comment received from the Office of Planning and Zoning after the hearing. That comment notes that Section 402 of the B.C.Z.R. is not applicable to the instant case; nonetheless continues to recommend denial of the Petition. The Planning Staff comment indicates that the subject request is inconsistent with the goals of the Essex Revitalization Plan and would conflict with residential properties which are located nearby.

Clearly, this case must be considered in light of Sections 230.9 and 101 of the B.C.Z.R. Section 230.9 enumerates certain of the of the permitted uses in a B.L. zone. Among the uses permitted as of right by that section is a residential art salon. Thus, the real issue in this case relates to the definition of residential art salon set forth in Section 101 of the B.C.Z.R. and whether the proposed use comports with that definition. A residential art salon is defined as "A portion of a dwelling unit used for the exhibition and sale of original works of art. For the purposes of these regulations, an 'original work of art' shall include a numbered reproduction from a series of no more than 50, which reproduction is individually signed by the artist. 'A residential art salon' shall not include a photographic studio." As was made clear from the testimony and evidence presented, the activity which goes on in the subject site might be more commonly referred to as a tattoo parlor. In fact, a sign shown in the photographs of the site identifies the business located thereon as "Gypsy's Tattoos." Pictures of the interior of the site disclose that the lessee/proprietor, Mr. Ensor, displays a large number of original art designs from which his clientele may select for their tattoos. Petitioner

and his counsel argue that this display constitutes an original work of art as contemplated by the B.C.Z.R.

Can a tattoo be a work of art? Unfortunately, the term "work of art" is not defined in the B.C.Z.R. When words are not defined by Section 101, the regulations require that the ordinarily accepted definition in Webster's Third New International Dictionary be applied. Webster defines the term "art" as generally "One of the humanities traditionally including history, philosophy, literature, languages and the fine arts." Other definitions in Webster include "An occupation or business requiring knowledge or skill, or the craft of an artist including a method or device that produces an artistic effect or is used for decorative purposes." Applying these definitions, I cannot agree with the Office of Planning and Zoning's position that the application of a tattoo does not constitute an original work of art. Indeed, there appears to be no difference between the work of the great Masters and Mr. Ensor's occupation than a matter of taste and the surface (canvas versus skin) on which the work of art is created. Although most would no doubt find great distinction between a Rembrandt and an "Ensor" in terms of beauty and value, I cannot so narrowly construe the definition contained within Section 101 of the B.C.Z.R. to preclude Mr. Ensor's products from being considered works of art. Art, like beauty, is in the eye of the beholder.

As to the balance of the definition, it is clear that the structure located on the subject lot includes two apartment units and thus the salon is clearly a portion of a dwelling unit, as required. Therefore, the Petitioner is permitted as of right in this zone and the Petition for Special Hearing should be granted.

ORDER RECEIVED FOR FILING
Date 5/19/93
By M. Gork

ORDER RECEIVED FOR FILING
Date 5/19/93
By M. Gork

ORDER RECEIVED FOR FILING
Date 5/19/93
By M. Gork

ORDER RECEIVED FOR FILING
Date 5/19/93
By M. Gork

Moreover, it should be noted that there appears to be widespread support for this business from the neighbors of the property. As Mr. Ensor noted, his business has been located at this site for approximately 8 years. The Petition before me was advertised and posted as required by the B.C.Z.R. and no one appeared in opposition. Clearly, if the business did detrimentally affect this community as suggested by the Office of Planning and Zoning, one would expect a number of Protestants. Further, as noted above, the Petitioner produced a large number of signatures on a petition in favor of the use. Although zoning is not by plebiscite, these signatures are significant as they go to rebut the comment from the Office of Planning and Zoning.

Pursuant to the advertising, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested should be granted.

THEREFORE, IT IS ORDERED by the Zoning Commissioner of Baltimore County this 19th day of May, 1993 that the Petition for Special Hearing to approve the accessory use of a portion of the hereindescribed property as an art salon specializing in demographic art work under Section 500.7 of the B.C.Z.R., be and is hereby GRANTED, subject, however, to the following restriction:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this Order has expired. If, for whatever reason, this Order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.

LAWRENCE E. SCHMIDT
Zoning Commissioner
for Baltimore County

LES:mmn

Baltimore County Government
Zoning Commissioner
Office of Planning and Zoning
Suite 113 Courthouse
400 Washington Avenue
Towson, MD 21204
(410) 887-4386

May 17, 1993

Mr. Gerald Bathurst
7 Margaret Avenue
Baltimore, Maryland 21221

Mr. Elton Ensor
4213 East Lombard Street
Baltimore, Maryland 21224

RE: Petition for Special Hearing
Case No. 93-260-SPH
Property: 203 Eastern Boulevard

Gentlemen:

Enclosed please find the decision rendered in the above captioned case. The Petition for Special Hearing has been granted in accordance with the attached Order.

In the event the decision rendered is unfavorable to any party, please be advised that any party may file an appeal within thirty (30) days of the date of the Order to the County Board of Appeals. If you require additional information concerning filing an appeal, please feel free to contact our Appeals Clerk at 887-3391.

Very truly yours,
LAWRENCE E. SCHMIDT
Zoning Commissioner

LES:mmn
att.

Petition for Special Hearing
93-260-SPH
to the Zoning Commissioner of Baltimore County
for the property located at 203 EASTERN BOULEVARD
which is presently zoned B.L.

This Petition shall be filed with the Office of Zoning Administration & Development Management. The undersigned, legal owner(s) of the property situated in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.7 of the Zoning Regulations of Baltimore County, to determine whether or not the Zoning Commissioner should approve

A use permit for the accessory use of demographic art work in a Residential Art Salon.

Property is to be posted and advertised as prescribed by Zoning Regulations. I, or we, agree to pay expenses of above Special Hearing advertising, posting, etc., upon filing of this petition, and further agree to and be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

Contract Purchaser(s)
Elton Ensor
Address
4213 East Lombard Street
Baltimore, MD 21224
City State Zip
Attorney for Petitioner
F. Vernon Booser, Esquire
Address
614 Rosley Avenue
Towson, MD 21204
City State Zip
Legal Owner(s)
Gerald Bathurst
Rosemary Bathurst
Address
7 Margaret Avenue
Baltimore, MD 21221
City State Zip
Name
Address
Office Use Only
RECEIVED
DATE 2-2-93

KENNETH J. WELLS, INC.
Land Planners and Surveyors

P. O. Box 28436
Baltimore, MD 21234

93-260-SPH

October 30, 1992

ZONING DESCRIPTION
203 EASTERN BOULEVARD
BALTIMORE COUNTY, MARYLAND

Being Lot No's 67 and 68, Section No. 2 in the subdivision of Mt. Holly Terrace as recorded in Baltimore County Plat Book # 8 Folio 25, containing 6,250 square feet. Also known as 203 Eastern Boulevard and located in the 15th Election District.



266

ORDER RECEIVED FOR FILING
Date 5/19/93
By M. Gork

CERTIFICATE OF POSTING
ZONING DEPARTMENT OF BALTIMORE COUNTY
Towson, Maryland

District: 1074 Date of Posting: 3/2/93

Posted for: Special Hearing

Petitioner: Gerald & Rosemary Bathurst

Location of property: 203 (SEB) Eastern Blvd., E. of NE/Southern Ave.

Location of Sign: County Building, 100 W. of N. of Public

Remarks: None Date of return: 3/2/93

Number of Signs: 1

CERTIFICATE OF PUBLICATION

TOWSON, MD. 2/18 1993

THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 2/18 1993

THE JEFFERSONIAN,
S. Zeke Olson
Publisher

60.27

receipt

Date: 2/02/93 93-260-SPH H9300266

PUBLIC HEARING FEES QTY PRICE

0.00 SPECIAL HEARING (OTHER) 1 X \$250.00

LAST NAME OF OWNER: BATHURST TOTAL: \$250.00

04404007221CHRC \$250.00
BA C009:21AM02-02-93
Please Make Checks Payable To: Baltimore County

Cashier Validation

receipt

Date: 3/2/93 93-260 H/D 3/1 4/13

Account: R 001:6150

04404007221CHRC \$60.27
BA C009:21AM02-02-93
Please Make Checks Payable To: Baltimore County

Cashier Validation

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

FEB 10 1993

DATE: FEB 10 1993

Elton Ensor
4213 E. Lombard Street
Baltimore, Maryland 21204

RE: CASE NUMBER: 93-260-SPH (Item 266)
SE/8 Eastern Boulevard, 50' +/- NE of c/l Gollier Avenue
203 Eastern Boulevard
15th Election District - 5th Councilmanic
Legal Owner(s): Gerald Bathurst and Rosemary Bathurst
Contract Purchase(s): Elton Ensor
HEARING: TUESDAY, MARCH 9, 1993 at 9:00 a.m. in Rm. 118, Old Courthouse.

Dear Petitioner(s):

Please be advised that \$ 60.27 is due for advertising and posting of the above captioned property and hearing date.

THIS FEE MUST BE PAID AND THE ZONING SIGN & POST SET(S) RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 109, Towson, Maryland 21204. Place the case number on the check and make same payable to Baltimore County, Maryland. In order to avoid delay of the issuance of proper credit and/or your order, immediate attention to this matter is suggested.

Carl Jablon
ARNOLD JABLON
DIRECTOR

cc: P. Vernon Booser, Esq.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

FEBRUARY 10, 1993

NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 106 of the County Office Building, 111 W. Chesapeake Avenue in Towson, Maryland 21204 or Room 118, Old Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 93-260-SPH (Item 266)
SE/8 Eastern Boulevard, 50' +/- NE of c/l Gollier Avenue
203 Eastern Boulevard
15th Election District - 5th Councilmanic
Legal Owner(s): Gerald Bathurst and Rosemary Bathurst
Contract Purchase(s): Elton Ensor and Rosemary Ensor
HEARING: TUESDAY, MARCH 9, 1993 at 9:00 a.m. in Rm. 118, Old Courthouse.

Special Hearing to approve a use permit for the accessory use of dermographic art work in a residential art salon.

Carl Jablon
ARNOLD JABLON
DIRECTOR

cc: Gerald and Rosemary Bathurst
Elton Ensor
P. Vernon Booser, Esq.

NOTE: HEARINGS ARE HANDICAPPED ACCESSIBLE; FOR SPECIAL ACCOMMODATIONS PLEASE CALL 887-3353.

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

FEBRUARY 23, 1993

NOTICE OF REASSIGNMENT

CASE NUMBER(S): 93-260-SPH
LEGAL OWNER: GERALD BATHURST, et ux
CONTRACT PURCH: ELTON ENSOR, et ux
LOCATION: 203 EASTERN BOULEVARD

HEARING OF THE ABOVE MATTER WILL TAKE PLACE AS FOLLOWS:

TUESDAY, APRIL 13, 1993 at 9:00 a.m.

IN THE BALTIMORE COUNTY COURTHOUSE, ROOM 118, 400 WASHINGTON AVENUE, TOWSON, MARYLAND 21204.

Carl Jablon
ARNOLD JABLON
DIRECTOR

cc: F. Vernon Booser, Esq.
Elton Ensor, et ux
Gerald Bathurst, et ux

Baltimore County Government
Office of Zoning Administration
and Development Management

111 West Chesapeake Avenue
Towson, MD 21204 (410) 887-3353

March 3, 1993

F. Vernon Booser, Esquire
614 Bosley Avenue
Towson, MD 21204

RE: Case No. 93-260-SPH, Item No. 266
Petitioner: Gerald and Rosemary Bathurst, et al
Petition for Special Hearing

Dear Mr. Booser:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with the above referenced petition. The attached comments from each reviewing agency are not intended to indicate the appropriateness of the zoning action requested, but to assure that all parties, i.e., Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on February 2, 1993, and a hearing was scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a preliminary review by Zoning personnel.

SHA Maryland Department of Transportation
State Highway Administration

O. James Lighthizer
Secretary
Hal Kassoff
Administrator

2-12-93

Ms. Julie Winiarski
Zoning Administration and
Development Management
County Office Building
Room 109
111 W. Chesapeake Avenue
Towson, Maryland 21204

Re: Baltimore County
Item No.: + 266 (JCM)

Dear Ms. Winiarski:

This office has reviewed the referenced item and we have no objection to approval as it does not access a State roadway and is not effected by any State Highway Administration projects.

Please contact Bob Small at 410-333-1350 if you have any questions.

Thank you for the opportunity to review this item.

Very truly yours,
Bob Small
for John Contestabile, Chief
Engineering Access Permits
Division

My telephone number is 410-333-1350

383-7555 Baltimore Metro - 585-5451 D.C. Metro - 1-800-492-5082 Statewide Toll Free
707 North Calvert St., Baltimore, Maryland 21203-9717

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director
Zoning Administration &
Development Management

FROM: Pat Keller, Deputy Director
Office of Planning and Zoning

DATE: February 24, 1993

SUBJECT: 203 Eastern Boulevard

INFORMATION:

Item Number: 266

Petitioner: Gerald Bathurst

Property Size: _____

Zoning: B.L.-C.S.-1

Requested Action: _____

Hearing Date: _____

SUMMARY OF RECOMMENDATIONS:

Based upon an analysis of the information provided and a review of the Baltimore County Zoning Regulations, staff recommends the request for a use permit for the accessory use of dermographic art work in a Residential Art Salon be denied for the reasons as follows:

This request is not in keeping with the uses envisioned by the Essex Revitalization Plan and as evidenced by the listed hours of operation, the use would also present an obvious conflict with the residential properties located within close proximity.

Section 402C addresses the use of Residential Art Salons and provides the standard for consideration of the zones which permit such uses.

The proposed use appears to be in direct conflict with the language of Section 402C and also directly conflicts with Section 230.1 which restricts uses to those permitted and limited in the residential zone immediately adjoining B.L. zoned property.

Pg. 1

The applicant's site immediately adjoins a R.O. zone and the Baltimore County Zoning Regulations dictate that uses permitted in R.O. zones are limited to those uses allowed and as limited in a D.R. 5.5 zone. Therefore, the issue of whether or not this property can be approved with a Residential Art Salon is covered by Section 402C.1 which states,

402C.1 - "A residential art salon may be allowed, by special exception, in an R.O. 2, R.O. 5, D.R. 1, or D.R. 2 zone only outside the Urban-Rural Demarcation Line and only on a lot no smaller than 1 acre; in a D.R. 16 zone, a residential art salon is allowable only in a building originally constructed as a one-family dwelling that is situated in a historic district so designated by the National Register of Historic Places or the final landmarks list of the Baltimore County Landmarks Preservation Commission or on a lot with frontage on a Class I or Class II commercial motorway."

In summary, in this particular case, the regulations for D.R. zones dictate how the subject property can be utilized because the above mentioned use is not permitted by right or by special exception in the B.L. zone. The B.L. zone permits any use permitted and as limited in the residential zone immediately adjoining a property. However, in this case, the adjoining property is zoned R.O. and is thus specifically governed by the D.R. 5.5 standards. A review of Section 402C.1 clearly indicated that the D.R. 5.5 zone does not permit residential art salons.

Prepared by: *Jeffrey M. Long*

Division Chief: *Carol K. Kline*

PK/JL:lw

266, ZAC/ZAC1

Pg. 2

BUREAU OF TRAFFIC ENGINEERING
DEPARTMENT OF PUBLIC WORKS
BALTIMORE COUNTY, MARYLAND

DATE: Feb. 18, 1993

TO: Mr. Arnold Jablon, Director
Office of Zoning Administration
and Development Management

FROM: Rahee J. Famili

SUBJECT: Z.A.C. Comments

Z.A.C. MEETING DATE: Feb. 16, 1993

There are no comments on item numbers 265, 266, 269, 270, 271, 272, 273, 274, 277 and 278.

Rahee J. Famili
Rahee J. Famili
Traffic Engineer II

RJF/lvd

Baltimore County Government
Fire Department

700 East Joppa Road Suite 901
Towson, MD 21286-5500

FEBRUARY 19, 1993

(410) 887-4500

Arnold Jablon
Director
Zoning Administration and
Development Management
Baltimore County Office Building
Towson, MD 21204

RE: Property Owner: GERALD BATHURST AND ROSEMARY BATHURST

Location: #203 EASTERN BOULEVARD

Item No.: +266(JCM) Zoning Agenda: FEBRUARY 16, 1993

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: *Carl J. ...*
Planning Group
Special Inspection Division

JP/KEKH

BALTIMORE COUNTY, MARYLAND

INTER-OFFICE CORRESPONDENCE

TO: Lawrence E. Schmidt
Zoning Commissioner

DATE: April 13, 1993

FROM: Pat Keller, Deputy Director
Office of Planning & Zoning

SUBJECT: 203 EASTERN BOULEVARD

Based upon a conversation with the Petitioner's attorney, F. Vernon Boozer, and a review of Section 230 of the Baltimore County Zoning Regulations, it appears that staff misinterpreted the regulations pertaining to the proposed use of the property as a Residential Art Salon. However, the subject request for the proposed demagographic art work use (tattoo parlor), is inconsistent and not in keeping with the goals of the Essex Revitalization Plan. As presented an obvious conflict with the residential properties located within close proximity to the applicant's site. Furthermore, the use of a tattoo parlor is not permitted in any zone listed in the Baltimore County Zoning Regulations.

Staff regrets our initial misinterpretation of the regulations and respectfully requests that you contact this office if additional information is required.

JL:lw
203EAST.BLV/TXTLLF

cc: F. Vernon Boozer, Esquire
Phyllis C. Friedman, People's Counsel



PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
DAWN E. CONNARY	3518 WAGON TRAIN RD
KURT L. CONNARY	3518 WAGON TRAIN RD
NANCY ENSER	4223 E. Lombard St.
① ELLIOT E. ENSER	

Baltimore County Zoning Commissioner
Office of Planning and Zoning
111 West Chesapeake Avenue
Towson, Maryland 21204

PHOTOS



ESSEX
SHEET N.E. 1-G

#266

EXHIBIT No 1